Cri. 472/96 Cri Appeal 47

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000059441

(2)

APPEAL OF PRISONER

No.... 3443 ..... Name ..... Division B

Father's name ..... Residence ..... Age ..... Sentenced to ..... On ..... Under section ..... by .....

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 24/1/96

2 Date on which copy received 6/2/96

3 Date on which Appeal sent 26/2/96

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No.... 3443 ..... Name .....

Confined in ..... Jail .....

No. 201 Lower Dated 26/2/96 1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ..... togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Central Jail, Raipur. (M.P.)
..... Jail .....

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

High Court of Madhya Pradesh
JABALPUR
Reg No. 143
Record Clerk

Date of receipt in Appellate Court .....

(P. T. O.

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 472 of 1996

Appellant : Sundar Singh

Vs.

Respondent : State of Madhya Pradesh

Shri S.L. Bajaj learned counsel for the appellant.

Shri U.N.S. Deo learned G.A. for the respondent/State.

ORAL JUDGMENT
(01.03.2006)

Dhirendra Mishra, J

The appellant has preferred this appeal under section 374(2) of the Code of Criminal Procedure questioning the legality and correctness of the impugned judgment dated 29.1.1996 passed by learned V Additional Sessions Judge, Bilaspur in ST No. 268/1995 convicting the accused/appellant under section 302 of the IPC for causing death of Suljhana Bai, his own mother and sentencing him to undergo imprisonment for life.

2. Case of the prosecution in brief is that Bhagwan Deen PW-1, brother of the appellant lodged a report (P-1) on 6.2.1995 at about 4 p.m. mentioning therein that on the date of incident he had gone to work in the Nursery of Charchedi along with his wife and after completing the work at about 4 p.m. he went to the house of his mother to see her in Charchedi

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and saw that his brother Sundar Singh was sitting in her house and he was weeping keeping the head of Suljhana Bai in his lap. On being asked the appellant stated that he had assaulted his mother with club. On examination he found that his mother was breathing who subsequently died. He has further stated that his mother had sustained injuries over both her hands, head and chest. On further inquiry, the appellant stated that there was some dispute in relation to some transaction between them and on account of that he assaulted his mother with club. It was further mentioned in the FIR that when his grandmother came to intervene, Sundar Singh assaulted her also with club as a result of which she sustained injuries over her and hand.

3. After registering the crime No. 26/1995 the Investigating Officer conducted investigation. During investigation inquest over the dead body of Suljhana Bai was performed in the presence of witnesses vide P-7. The dead body of Suljhana Bai was sent for post mortem examination to Primary Health Centre, Marwahi where Dr. Sagar Shukla, PW-5 conducted post mortem on the dead body of the deceased and submitted his report Ex. P-2. In the post mortem examination the Doctor noticed lacerated wound over frontal region of the head, lacerated wound over the right ear, lacerated wound over left forearm lower half of radius ulna, lacerated wound over left leg lower 1/3rd of the tibia and fibula and lacerated wound over right leg 1/3rd of the tibia and fibula. He has opined that the above mentioned injuries were caused by hard and blunt object and the same were ante mortem in nature. He has further opined that the cause of death is hypovolumic shock / nuerogenic shock due to violent

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injuries leading to excessive hemorrhage / severe pain and the death was homicidal in nature. Teejmati Bai, the grandmother of the appellant was also sent for medical examination vide Ex P-3 and on his examination the doctor found lacerated wound of 1 x ½ x ½" present over post aspect of right upper arm caused by hard and blunt object and the same was simple in nature. The MLC of Teejmati Bai is Ex P-3. Sudhar Singh PW-2 had also sustained injuries while trying to save his mother and he was also sent for medical examination vide Ex. P-4. On examination of Sudhar Singh (PW-2) the doctor found lacerated wound over his left leg interior aspect and abrasion over dorsum of right foot and opined that both the injuries were caused by hard and blunt object. Blood stained and plain soil was seized from the spot vide Ex P-9. The triangular stone of 5 Kg , blood stained plank of Saal wood and 4 pieces of Sendha wood containing blood were seized vide Ex.P-10. A plastic container containing blood stained and plain soil was seized vide Ex. P-11. A sealed packet sent by the doctor after post mortem containing blood stained Sari of the deceased was seized vide Ex. P-12. The wearing apparels of the appellant were seized vide Ex. P-13. The seized articles containing blood like stains were sent for chemical examination to Forensic Science Laboratory vide Ex. P-14. After completion of the investigation charge sheet was filed against the appellant in the court of Judicial Magistrate First Class, Pendra Road, who in turn committed the case to sessions Judge, Bilaspur. Learned Additional Sessions Judge, received the same on transfer for trial.

4. Initially charge under section 302 of the IPC was framed against the appellant and subsequently an additional charge under section 323 of the

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IPC for causing simple hurt to Sudhar Singh and Teejmati Bai was framed against him. The appellant abjured his guilt. The prosecution in order to establish the charges against the appellant examined six witnesses in all. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in the case.

5. Learned trial Court after hearing the learned counsel for the accused/appellant and the counsel for the State convicted and sentenced the appellant as mentioned above.

6. Homicidal death of Suljhana Bai is not in dispute. Even otherwise, from perusal of the statement of PW-5 Dr. Shukla who has found injuries over the person of the deceased as detailed above and further in the light of the statement of PW-3 Budhram, the eyewitness to the incident, homicidal death of deceased of Suljhana Bai is established.

7. Now the second question to be considered for adjudication of this appeal is whether the prosecution has been able to establish the involvement of the appellant in the commission of the offence in question? The case of the prosecution against the appellant is based on the statement of eyewitness Budhram PW-3 and is further based on confession of the accused/appellant made before PW-1 Bhagwan Deen on the date of the incident. PW-1 Bhagwan Deen, the real brother of the accused and the complainant herein, who lodged the FIR of Ex. P-1 has named the appellant in the FIR as assailant. In his statement before the

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Court he has stated that he had gone to village Charchedi to work in the Nursery along with his wife and when he went to the house of his mother at about 4 p.m. to see her, he found the accused, his elder brother, sitting there keeping the head of deceased Suljhana Bai in his lap and he was weeping. At that time his mother was breathing slowly and he gave water to his mother and took her inside the house. Thereafter he inquired from accused/appellant Sundar as to why he killed her whereupon Sundar replied that he had taken liquor and confessed that he killed the deceased. In the cross examination he has stated that at the time of incident no one was present in the house and on the date of incident some one had made the accused drunk and thereafter he lodged the report. To the suggestion that the accused did not confess before him that he killed his mother, he denied the same. Thus from the cross examination of this witness the defence has not been able to elicit anything which makes the statement of this witness suspicious.

8. PW-2 Sudhar Singh who had sustained injuries in the incident has stated that Suljhana Bai was his mother and when he returned to his home after work at 4 p.m. he inquired about his mother from an old lady and thereafter went to the well where her mother was lying. Sundar Singh was also there who thereafter attacked him with club on his left leg, right shoulder and left shoulder and fled away from there. He has further stated that the accused also assaulted his grandmother with Lathi. He has further stated that when he saw his mother she was already dead. He has stated that he did not know as to who had assaulted his mother as he did not see any body assaulting his mother. He has further stated that the accused

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used to demand money form his mother and there was quarrel always between them in the name of money. In the cross examination the defence has not questioned that the deceased had quarreled the accused in the name of money. PW-3 Budhram has stated that deceased Suljhana Bai was his elder mother and at the time of incident he was engaged in plastering the wall at about 4 p.m. and Suljhana Bai was thrashing paddy in the house of Jawahar. At that time Sundar Singh came to Suljhana Bai and demanded paddy whereupon Suljhana Bai stated that she would give him paddy later on. However, the appellant insisted and dragged his mother towards her house and closed the door and started assaulting her, whereupon she cried for help stating that Sundar Singh was assaulting her. He went to their house and found the door closed. He has further stated that thereafter he entered the house through the house of his elder mother and saw that Sundar Singh was assaulting Suljhana Bai and he was also assaulting an old lady who was standing there with club. When Suljhana Bai tried to escape, the accused further assaulted his mother and took her near the well and assaulted her with plank of Saal wood and also with a stone over her chest. He has further stated that when the accused tried to assault him, he ran away from the place of incident.

9. Learned counsel for the appellant submits that this witness has made material improvement in his statement as is evident from paragraphs 4, 5 and 6 of his cross examination that the fact that when Suljhana Bai was trying to escape the accused assaulted her, the accused also assaulted an old lady and tried to attack him, he further assaulted the deceased with stone, did not find place in his diary statement of Ex D-2.

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On the basis of above omission it is argued that this witness is in fact not an eyewitness and therefore, no reliance can be placed on his statement. In the further cross examination this witness has stated that the accused assaulted Teejmati Bai at the time of incident. PW-4 Sher Singh, brother of the appellant has stated that when he returned home at about 5 p.m. he found his mother dead and injuries were present over her left leg, chest and at that time accused was not in the home and he had fled away somewhere else. In the cross examination he has admitted that his mother resided with accused Sundar Singh.

10. Thus from the perusal of the statement of PW-3 Budhram, it is evident that he has made certain improvement in his statement with respect to the assault with stone and with respect to the attack by the accused with club. However, the evidence of this witness has been duly corroborated with the evidence of PW-1 Bhagwan Deen before whom the appellant made extra judicial confession. The act of this appellant is further corroborated by statement of PW-2 Sudhar Singh who has stated that the dead body of the deceased was lying near the well and when he reached there the appellant was also there and when he tried to give water to his mother, the appellant assaulted him with club. The statement of PW-3 Budhram is further corroborated by the statement of Dr. Sagar Shukla PW-5 who has found various injuries over the body of the deceased as described hereinabove.

11. Thus from the evidence of the above witnesses the involvement of the accused in the crime in question is established.

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12. Learned counsel for the appellant has further argued that except solitary injury over the head of the deceased, there is no other injury on the vital part of the deceased by which intention of the appellant to cause death of the deceased can be inferred because all the other injuries were present over the leg and hand of the deceased, therefore, the court below was not justified in holding the appellant guilty under section 302 of the IPC. The injuries present over the person of the deceased, an old lady aged about 60 years have been enumerated by PW-5 in his post mortem report who has found lacerated wound over head in the size of 2x1/2x1/2' and lacerated wound over the right ear and fractures over the right leg, left leg and left hand. The intention of the accused is to be gathered from the manner in which the assault was made, the weapon which was used in the crime and the part of the body where the injury was inflicted.

13. In the present case looking to the injuries present over the person of the deceased and further considering that the deceased sustained three fractures over her hand, both of her legs, the intention of the accused to cause death of Suljhana Bai is writ large and we are unable to accept the argument of the counsel for the appellant that the offence does not travel beyond section 304-II of the IPC.

14. In the result we do not find any illegality or infirmity in the judgment of the trial Court and the same does not require any interference from this Court. Thus the appeal being devoid of any merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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